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No. 06-631

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In The

Supreme Court of the United States

SHAMS Q. NAJM,

Petitioner,

v.

COUNTY OF LOS ANGELES;
LOS ANGELES COUNTY SUPERIOR COURT,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the California trial court err in granting Respondent Superior Court of California, County of Los Angeles' motion for summary judgment in regard to Petitioner Shams Q. Najm's civil complaint for an alleged violation of the California Fair Employment and Housing Act?[1]

[1] While Petitioner has attempted to phrase several questions, the Petition only challenges the California trial court's summary judgment ruling: "The sole issue is whether the trial court erred in granting Respondent's motion for summary judgment." (Petition for Writ of Certiorari, p. 9.)

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PRELIMINARY STATEMENT

Petitioner Najm has provided absolutely no jurisdictional basis to grant his Petition for Writ of Certiorari in this matter. To begin, the Petition should be denied as untimely pursuant to 28 U.S.C. Section 2101(c). Further, in his Petition, Najm merely disagrees with the California trial court's grant of summary judgment in favor of Respondent Superior Court of California, County of Los Angeles ("Superior Court") in regard to his civil complaint for an alleged violation of the California Fair Employment and Housing Act ("FEHA"). As such, the Petition presents no jurisdictional basis for granting certiorari pursuant to 28 U.S.C. Section 1257.

STATEMENT OF THE CASE

This case arises out of Petitioner Shams Q. Najm's application for employment as an Investigator with the Superior Court that he submitted to the Superior Court in August of 2001. After reviewing Najm's employment application materials, the Superior Court determined that Najm did not meet the minimum requirements for the position and disqualified him from further consideration. After being informed of his disqualification, Najm contacted the Superior Court for further information on its determination. In response, the Superior Court provided Najm with a detailed, written explanation of why he did not appear to satisfy the minimum requirements for the Investigator position and provided him with information on how to appeal his disqualification.

Over five months later, Najm again challenged the Superior Court's determination, claiming that he was

qualified for the position. In order to properly analyze his claimed qualifications, the Superior Court requested that Najm provide a description of his qualifying work experience. Najm, however, refused to provide any further information regarding his qualifications. Subsequently, the Superior Court again offered Najm the opportunity to provide information regarding his qualifications. Najm never provided the requested information. Rather than pursue a re-evaluation, Najm filed a civil lawsuit against the Superior Court claiming that it had discriminated against him on the basis of his race and age in violation of the FEHA by refusing to hire him. Thus, despite Najm's references in his Petition to federal statutes – such as the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, and the National Labor Relations Act, among others – Najm's civil complaint at issue in this matter only alleged a claim under California law.

In granting summary judgment in favor of the Superior Court, the trial court ruled that Najm failed to even establish a prima facie case of race or age discrimination because: (1) Najm failed to complete the application process for the position he sought; (2) Najm was not qualified for the position he sought; (3) the person hired for the position Najm sought was more qualified; and (4) there is no evidence suggesting any discriminatory motive on the part of the Superior Court. The trial court granted summary judgment in favor of the Superior Court by order dated May 13, 2004. Petition, Appendix C at p. App. 23.

Subsequently, the Superior Court brought a motion to recover its attorneys' fees and costs pursuant to California Code of Civil Procedure Section 998 and the FEHA. The trial court granted the motion for attorney fees and costs in its entirety. As a result, judgment in favor of the

Superior Court and against Najm was entered by the trial court on September 23, 2004. Petition, Appendix B at p. App. 20. Najm appealed this judgment.

Reviewing the record de novo, the California Court of Appeal, Second Appellate District, Division Three, agreed with the trial court's determination that Najm failed to establish a prima facie case of race or age discrimination in that he failed to complete the application process, he was not qualified for the position, and there was no evidence of any discriminatory motive on the part of the Superior Court. Thus, the Court of Appeal affirmed the trial court's grant of summary judgment in favor of the Superior Court. In regard to the order awarding attorney fees and costs, the Court of Appeal determined that Najm filed his notice of appeal only in regard to the summary judgment order and well before the trial court had awarded attorneys' fees and costs or entered a final judgment. Accordingly, the Court of Appeal considered Najm's appeal from the order granting summary judgment but dismissed his purported appeal from the order granting attorney fees and costs because it was insufficient and premature as a matter of law. The Court of Appeal's decision was filed on March 20, 2006. Petition, Appendix A at p. App. 1.

Subsequently, Najm filed a Petition for Review to the California Supreme Court, which was denied in its entirety by order dated June 28, 2006. Petition, Appendix D at p. App. 24. Najm then filed his current Petition for Writ of Certiorari on November 7, 2006.

NAJM'S PETITION FOR WRIT OF CERTIORARI LACKS A JURISDICTIONAL BASIS AND SHOULD BE DENIED

I. NAJM'S PETITION FOR WRIT OF CERTIORARI IS UNTIMELY

A petition for writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely if filed with the Clerk of the United States Supreme Court within 90 days after entry of the order denying discretionary review. 28 U.S.C. § 2101(c). The 90-day limitation is mandatory and jurisdictional. *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990).

Here, Najm's petition for discretionary review was denied by the California Supreme Court on June 28, 2006. Petition, Appendix D at p. App. 24. As a result, Najm was required to file his Petition for Writ of Certiorari within 90 days, or by September 26, 2006. Najm did not file his current Petition until November 7, 2006. As a result, Najm's Petition for Writ of Certiorari is untimely and should be denied.

II. NAJM'S PETITION LACKS ANY JURISDICTIONAL BASIS UNDER 28 U.S.C. SECTION 1257

The jurisdiction of the United States Supreme Court to review decisions of state courts by appeal is based upon 28 U.S.C. Section 1257, which reads as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty

> or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Here, Najm's Petition for Writ of Certiorari fails to invoke the Supreme Court's jurisdiction on any grounds. Instead, as Najm's Petition asserts: "The sole issue is whether the trial court erred in granting [the Superior Court's] motion for summary judgment." Petition, p. 9. Simply put, Najm's mere disagreement with the trial court's findings and ruling on summary judgment in regard to the application of state law does not provide a jurisdictional basis for review. In addition, none of the issues considered by the trial court or the California Court of Appeal invoke any of the bases for Supreme Court jurisdiction under 28 U.S.C. Section 1257.

III. CONCLUSION

Petitioner Shams Q. Najm has provided absolutely no jurisdictional basis to grant certiorari in this matter. Najm's Petition for Writ of Certiorari does nothing more than to simply disagree with the California trial court's findings and ruling on summary judgment regarding California law. Accordingly, Respondent Superior Court of

California, County of Los Angeles respectfully requests that Najm's Petition for Certiorari be denied.

Dated: December 7, 2006

Respectfully submitted,

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